

By: Capelo

H.B. No. 3009

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain advance directives for medical treatment and
3 medical treatment decisions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (7) of Section 166.002, Health and
6 Safety Code, is amended to read as follows:

7 (7) "Health care or treatment decision" means consent,
8 refusal to consent, or withdrawal of consent to health care,
9 treatment, service, or a procedure to maintain, diagnose, or treat
10 an individual's physical or mental condition, including such a
11 decision on behalf of a minor in accordance with the Family Code and
12 subject to applicable federal law and regulations relating to child
13 abuse and neglect to the extent applicable to the state based upon
14 its receipt of federal funds.

15 SECTION 2. Section 166.046, Health and Safety Code, is
16 amended by amending the heading of the section and subsections (a),
17 (b) and (e), inserting new subsections (f) and (g), and renumbering
18 the remaining subsections accordingly, to read as follows:

19 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR
20 TREATMENT DECISION. (a) If an attending physician refuses to
21 honor a patient's advance directive or a health care treatment
22 decision made by or on behalf of a patient [~~under Section 166.039~~],
23 the physician's refusal shall be reviewed by an ethics or medical
24 committee. The attending physician may not be a member of that

1 committee. The patient shall be given life-sustaining treatment
2 during the review.

3 (b) The patient or the person responsible for the health
4 care decisions of the individual who has made the decision
5 regarding the directive or treatment decision:

6 (1) shall be informed of the committee review process
7 not less than 48 hours before the meeting called to discuss the
8 patient's directive, unless the time period is waived by mutual
9 agreement; ~~and~~

10 (2) at the time of being so informed, shall be
11 provided:

12 (A) a copy of the appropriate statement set forth
13 in Section 166.052 of this subchapter; and

14 (B) a copy of the registry list of health care
15 providers and referral groups that have volunteered their readiness
16 to consider accepting transfer or to assist in locating a provider
17 willing to accept transfer, which is posted on the website
18 maintained by the Texas Health Care Information Council under
19 Section 166.053 of this subchapter; and

20 (3) is entitled to:

21 (A) attend the meeting; and

22 (B) receive a written explanation of the decision
23 reached during the review process.

24 (e) If the patient or the person responsible for the health
25 care decisions of the patient is requesting life-sustaining
26 treatment that the attending physician and the review process have
27 decided is inappropriate treatment, the patient shall be given

1 available life-sustaining treatment pending transfer under
2 Subsection (d). The patient is responsible for any costs incurred
3 in transferring the patient to another facility. The physician and
4 the health care facility are not obligated to provide
5 life-sustaining treatment after the 10th day after the written
6 decision required under Subsection (b) is provided to the patient
7 or the person responsible for the health care decisions of the
8 patient unless ordered to do so under Subsection (i) [~~(g)~~].

9 (f) A physician, nurse or other person acting under the
10 direction of a physician who participates in the stopping or
11 withholding of cardiopulmonary resuscitation from a qualified
12 patient, is not civilly or criminally liable for failure to provide
13 resuscitation if, in reasonable medical judgment, the patient's
14 death would occur within minutes to hours regardless of the
15 provision of resuscitation.

16 (g) If during a previous admission to a facility, a
17 patient's attending physician and the review process under
18 Subsection (b) have determined that life-sustaining treatment is
19 inappropriate, and the patient is readmitted to the same facility
20 within six months from the date of the decision reached during the
21 review process conducted upon the previous admission, the review
22 process described in this section may be omitted if the patient's
23 attending physician and a consulting physician who is a member of
24 the ethics or medical committee of the facility document on the
25 patient's readmission that the patient's condition either has not
26 changed or has deteriorated since the review process was conducted.

27 (h) [~~(f)~~] Life-sustaining treatment under this section may

1 not be entered in the patient's medical record as medically
2 unnecessary treatment until the time period provided under
3 Subsection (e) has expired.

4 (i) [~~(g)~~] At the request of the patient or the person
5 responsible for the health care decisions of the patient, the
6 appropriate district or county court shall extend the time period
7 provided under Subsection (e) only if the court finds, by a
8 preponderance of the evidence, that there is a reasonable
9 expectation that a physician or health care facility that will
10 honor the patient's directive will be found if the time extension is
11 granted.

12 (j) [~~(h)~~] This section may not be construed to impose an
13 obligation on a facility or a home and community support services
14 agency licensed under Chapter 142 or similar organization that is
15 beyond the scope of the services or resources of the facility or
16 agency. This section does not apply to hospice services provided by
17 a home and community support services agency licensed under Chapter
18 142.

19 SECTION 3. Chapter 166, Health and Safety Code, is amended
20 by adding a new Section 166.052 to read as follows:

21 Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO
22 TRANSFER. (a) In cases in which the attending physician refuses to
23 honor an advance directive or treatment decision requesting the
24 provision of life-sustaining treatment, the statement required by
25 Section 166.046(b)(2)(A) shall be in substantially the following
26 form:

27 When There Is An Ethical Disagreement About Medical Treatment: The

1 Physician Recommends Against Life-Sustaining Treatment That You Wish

2 To Continue

3 You have been given this information because you have requested
4 life-sustaining treatment* to which the attending physician
5 objects. This information is being provided to help you understand
6 state law, your rights and the resources available to you in such
7 circumstances. It outlines the process for resolving ethical
8 disagreements among patients, families and physicians. It is based
9 upon the Texas Advance Directive Act, codified at Texas Health and
10 Safety Code Section 166.046.

11 ° When an attending physician is unable to honor an advance
12 directive or other request for life-sustaining treatment because of
13 the physician's judgement that it would be inappropriate, he or she
14 will request that the case be reviewed by an ethics or medical
15 committee. Life-sustaining treatment will be provided through the
16 review.

17 ° You will receive notification of this review no less than 48
18 hours before a meeting of the committee related to your case. You
19 are entitled to attend the meeting. With your agreement, the
20 meeting may be held sooner than 48 hours if possible.

21 ° If you wish, you are entitled to receive a written explanation of
22 the decision reached during the review process.

23 If after this review process both the attending physician and the
24 ethics or medical committee conclude that life-sustaining
25 treatment is inappropriate, and yet you continue to request such
26 treatment, then the following procedure will occur:

27 1. The physician, with the help of the health care facility, will

1 assist you in trying to find a physician and facility willing to
2 provide the requested treatment.

3 2. You are being given a list of health care providers and referral
4 groups that have volunteered their readiness to consider accepting
5 transfer, or to assist in locating a provider willing to accept
6 transfer, maintained by the Texas Health Care Information Council.
7 You may wish to contact providers or referral groups on the list to
8 get help in arranging a transfer.

9 3. The patient will continue to be given the requested treatment
10 until he or she can be transferred to a willing provider or until 10
11 days has passed from the time you were given the committee's written
12 decision that life-sustaining treatment is not appropriate.

13 4. If a transfer can be arranged, the patient will be responsible
14 for the costs of the transfer.

15 5. If within 10 days a provider cannot be found willing to give the
16 requested treatment, life-sustaining treatment may be halted
17 unless a court of law has granted an extension.

18 6. You may ask the appropriate district or county court to extend
19 the 10-day period if the court finds that there is a reasonable
20 expectation that a physician or health care facility willing to
21 provide life-sustaining treatment will be found if the extension is
22 granted. You will probably need a lawyer's help if you wish to
23 consider seeking this type of extension.

24 * "Life-sustaining treatment" means treatment that, based on
25 reasonable medical judgment, sustains the life of a patient and
26 without which the patient will die. The term includes both
27 life-sustaining medications and artificial life support, such as

1 mechanical breathing machines, kidney dialysis treatment, and
2 artificial nutrition and hydration. The term does not include the
3 administration of pain management medication or the performance of
4 a medical procedure considered to be necessary to provide comfort
5 care, or any other medical care provided to alleviate a patient's
6 pain.

7 (b) In cases in which the attending physician refuses to
8 honor an advance directive or treatment decision requesting the
9 withholding or withdrawal of life-sustaining treatment, the
10 statement required by Section 166.046(b)(2)(A) shall be in
11 substantially the following form:

12 **When There Is An Ethical Disagreement About Medical Treatment: The**
13 **Physician Recommends Life-Sustaining Treatment That You Wish To Stop**
14 You have been given this information because you have requested the
15 withdrawal or withholding of life-sustaining treatment* and the
16 attending physician is unwilling to honor that request. The
17 information is being provided to help you understand state law,
18 your rights and the resources available to you in such
19 circumstances. It outlines the process for resolving ethical
20 disagreements among patients, families and physicians. It is based
21 upon the Texas Advance Directive Act, codified at Texas Health and
22 Safety Code Section 166.046.

23 ° When an attending physician is unable to honor an advance
24 directive or other request for withdrawal or withholding of
25 treatment for any reason, he or she will request that the case be
26 reviewed by an ethics or medical committee. Life-sustaining
27 treatment will be provided through the review.

1 ° You will receive notification of this review no less than 48
2 hours before a meeting of the committee related to your case. You
3 are entitled to attend the meeting. With your agreement, the
4 meeting may be held sooner than 48 hours if possible.

5 ° If you wish, you are entitled to receive a written explanation of
6 the decision reached during the review process.

7 If you or the attending physician do not agree with the decision
8 reached during the review process, and the attending physician
9 still declines to comply with your request to withhold or withdraw
10 life-sustaining treatment:

11 1. The physician, with the help of the health care facility, will
12 assist you in trying to find a physician and facility willing to
13 withdraw or withhold the life-sustaining treatment.

14 2. You are being given a list of health care providers and referral
15 groups that have volunteered their readiness to consider accepting
16 transfer, or to assist in locating a provider willing to accept
17 transfer, maintained by the Texas Health Care Information Council.
18 You may wish to contact providers or referral groups on the list to
19 get help in arranging a transfer.

20 * "Life-sustaining treatment" means treatment that, based on
21 reasonable medical judgment, sustains the life of a patient and
22 without which the patient will die. The term includes both
23 life-sustaining medications and artificial life support, such as
24 mechanical breathing machines, kidney dialysis treatment, and
25 artificial nutrition and hydration. The term does not include the
26 administration of pain management medication or the performance of
27 a medical procedure considered to be necessary to provide comfort

1 care, or any other medical care provided to alleviate a patient's
2 pain.

3 (c) An attending physician or health care facility may, if
4 it chooses, include any additional information concerning the
5 physician's or facility's policy, perspective, experience, or
6 review procedure.

7 SECTION 4. Chapter 166, Health and Safety Code, is amended
8 by adding a new Section 166.053 to read as follows:

9 Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The Texas
10 Health Care Information Council shall maintain a registry listing
11 the identity of and contact information for health care providers
12 and referral groups, situated inside and outside the State of
13 Texas, that have voluntarily notified the Council they may consider
14 accepting, or may assist in locating a provider willing to accept
15 transfer of a patient under Sections 166.045 or 166.046.

16 (b) The listing of a provider or referral group in the
17 registry described in this section does not obligate the provider
18 or group to accept transfer of, or provide services to, any
19 particular patient.

20 (c) The Texas Health Care Information Council shall post the
21 current registry list on its website in a form appropriate for easy
22 comprehension by patients and persons responsible for the health
23 care decisions of patients and shall provide a clearly identifiable
24 link from its home page to the registry page. The list shall
25 separately indicate those providers and groups that have indicated
26 their interest in assisting the transfer of:

27 (1) those patients on whose behalf life-sustaining

1 treatment is being sought;

2 (2) those patients on whose behalf the withholding or
3 withdrawal of life-sustaining treatment is being sought; and

4 (3) patients described in both subdivisions (1) and
5 (2) of this subsection.

6 (d) The registry list described in this section shall
7 include the following disclaimer:

8 "This registry lists providers and groups that have
9 indicated to the Texas Health Care Information Council
10 their interest in assisting the transfer of patients
11 in the circumstances described, and is provided for
12 information purposes only. Neither the Texas Health
13 Care Information Council nor the State of Texas
14 endorses or assumes any responsibility for any
15 representation, claim or act of the listed providers
16 or groups."

17 SECTION 5. Section C, Chapter 166, Health and Safety Code,
18 is amended by adding a new Section 166.102 to read as follows:

19 Sec. 166.102. PHYSICIAN'S DO-NOT-RESUSCITATE ORDER MAY BE
20 HONORED BY NON-EMS HEALTH CARE PROFESSIONALS. (a) Except as
21 provided by Subsection (b) of this section, a health care
22 professional may honor a physician's do-not-resuscitate order in an
23 out-of-hospital setting.

24 (b) Subsection (a) does not apply to emergency medical
25 services personnel, who shall honor only a properly completed
26 Out-of-Hospital DNR Order in accordance with this subchapter.

27 SECTION 6. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2003.